IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 30TH OCTOBER 2006 / 8TH KARTHIKA 1928

ST.Rev..No. 159 of 2004()

TA.1083/1997 of S.T.A.T.ADDL.BENCH,ERNAKULAM
.....

: REVISION PETITIONER/ASSESSEE/APPELLANT

M/S. STATE BANK OF INDIA, OVERSEAS BRANCH, KOCHI-3, REPRESENTED BY ITS ASSISTANT GENERAL MANAGER AJITH KUMAR.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SRI.FRANKUR D.JAYAN
SMT.DEEPSUR D.JAYAN
SRI.K.P.PRADEEP (PAYYANNUR)
SRI.SHANMUGHAM D. JAYAN
SMT.P.K.MAYA DEVI

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY ITS FINANCE SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER – ADV. SHRI.GEORGEKUTTY MATHEW

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 30/10/2006, ALONG WITH STRV NO. 170 OF 2004 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, J J.

Sales Tax Rev. Petition No. 159 & 170 of 2004

Dated, this the 30th day of October, 2006

J U D G M E N T

C.N.RAMACHANDRAN NAIR, J.

Both the tax revision cases are filed by the same Bank challenging the order of the Tribunal sustaining sales tax assessments on the sale of bullion to exporters for the years 1990-91 and 1991-92. The case of the petitioner is that the disputed quantity though delivered to exporters in the relevant year, was invoiced in the subsequent year after fixation of price. Therefore according to the petitioner sale of such quantity should be assessed in the succeeding year. However, the Assessing Officer estimated turn over in respect of full quantity delivered in the assessment year and assessed to tax. In the first appeal, the Appellate Authority though rejected the claim, directed acceptance of actual sales figures accounted in later year. This

was confirmed by the Tribunal against which revisions are filed.

2. We have heard the learned counsel for the petitioner and the learned Government Pleader.

3. The petitioner's case is that though goods namely bullion was delivered to the exporters against receipt of substantial amount, the ultimate sale price is fixed later and only after fixing the price, invoice is raised, which happened in the subsequent year. We are unable to accept this contention because by delivery of goods against substantial payment received the Bank has in fact affected "sale" as defined under Sec; 2(XXI) of the KGST Act. In fact, the purchasers are exporters and on taking delivery of the goods from the petitioners, the exporters were free to manufacture ornaments from the bullion purchased and could export/sell the same. Therefore, delivery of goods is pursuant to contract of sale and all what is left is only finalization of price and raising of final invoice. Since the sale takes place on delivery of goods under terms of contract, the transaction is

rightly assessed in the year in which delivery is given.

These Tax Revision Petitions are therefore dismissed.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(K.M.JOSEPH, JUDGE)

jg